

*FILED
JUL 29 2013
U.S. DISTRICT COURT
CLARKSBURG, W.VA.
4301*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

DEY, L.P. and DEY, INC., :
Plaintiffs, :
v. : Civil Action No. 1:09-cv-87
TEVA PARENTERAL MEDICINES, INC., : (Judge Keeley)
TEVA PHARMACEUTICALS USA, INC., and :
TEVA PHARMACEUTICAL INDUSTRIES, :
LTD., :
Defendants. :
:

PROPOSED STIPULATION AND ORDER

WHEREAS, Plaintiffs allege that Defendants infringe the following claims of the following patents: Claims 2, 3, 34, 40, 62, 65, 74, 90, 104, and 116 of U.S. Patent No. 6,667,344 (the “’344 Patent”); Claims 75, 76, 106, 112, 136, 154, 160, and 163 of U.S. Patent No. 6,814,953 (the “’953 Patent”); Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of U.S. Patent No. 7,348,362 (the “’362 Patent”); and Claims 1, 2, 3, 5, 6, 7, 8, and 9 of U.S. Patent No. 7,462,645 (the “’645 Patent”) (collectively, the “Asserted Claims”);

WHEREAS, in an Order dated July 17, 2013 (the “Summary Judgment Order”), the Court entered partial summary judgment finding that Defendants infringe Claims 1 and 65 of the ’344 Patent, as construed in the Court’s Memorandum Opinion and Order dated June 17, 2011 (the “Markman Order”); and

WHEREAS the parties wish to streamline the trial in this matter without prejudice to their rights to appeal the Court's Markman Order, Summary Judgment Order, and the reasoning contained therein;

IT IS HEREBY STIPULATED AND AGREED by the parties hereto, subject to the approval of the Court and the reservation of rights herein, that:

1. For the purpose of this civil action, Defendants stipulate that their ANDA Products in ANDA No. 91-141 infringe the Asserted Claims under the Court's Markman Order,

Summary Judgment Order, and the reasoning therein, without prejudice to Defendants' right to reinstate their noninfringement defenses upon any remand following appeal of this action;

2. Defendants' "best mode" defense is hereby dismissed without prejudice to reinstate the defense upon any remand following an appeal of this action;

3. Defendants' "enablement" defense is hereby dismissed as it relates to photostability without prejudice to reinstate that aspect of the defense upon any remand following an appeal of this action;

4. Defendants' "impermissible broadening through reexamination" defense is hereby dismissed as it relates to photostability without prejudice to reinstate that aspect of the defense upon any remand following an appeal of this action;

5. During the trial of this matter or in any pre- or post-trial submissions, no party will offer any opinions, arguments, or evidence concerning photostability as it relates to defendants' non-infringement, best mode, or enablement defenses;

6. The parties reserve the right to appeal the Markman Order, the Summary Judgment Order, and the reasoning therein, including, without limitation, the infringement decision, and reserve the right to reinstate any defense referenced herein after any remand; and

7. Dey's claims of infringement concerning unasserted claims of the '344 Patent, the '953 Patent, the '362 Patent, and the '645 Patent are dismissed with prejudice.

Respectfully submitted this 26th day of July, 2013.

/s/ Gordon H. Copland

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SO ORDERED this 29th day of July, 2013.


UNITED STATES DISTRICT JUDGE